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#13IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No. 5,793,279
Issue Date August 11, 1998
Application No. 08/702,977
Filed: August 26, 1996
Patentee: Daniel A. Nepela

COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Attention: Special Programs Office, DAC For Patents

PETITION UNDER 37 CFR 1.53(e)

Sir:

This petition is being submitted in response to the Notice Of Improper CPA dated February 25, 1999 for the above-identified case. It should be noted that a petition under 37 CFR 1.53(e) was submitted on December 16, 1998 and the petition fee was paid for this same case.

HISTORY OF THE CASE

The parent application Serial No. 08/702,977 was filed on August 26, 1996 with 104 claims. Examiner R. Patel of Art Unit 2838 made a requirement for restriction and the claims were divided into three groups. The elected species of the first group included 22 claims that were allowed. Prior to payment of the issue fee, Applicant submitted a first divisional application directed to the species of the second group. Due to a misunderstanding by Applicant, a form used for a continued prosecution application (CPA) was erroneously used for filing the divisional application. In effect, this caused the unintended abandonment of the parent application. The issue fee that was submitted for issuance of a patent for the parent application with 22 allowed claims was instead applied for issuing U.S. Patent No. 5,793,279 on August 11, 1998 with 25 claims directed to the species of the second group.

A request for filing a second divisional application was made on

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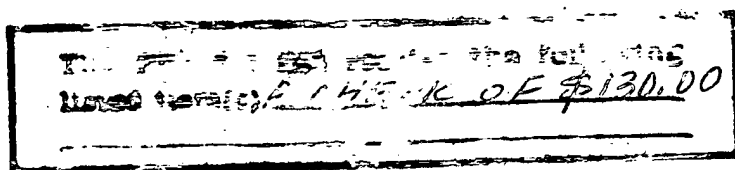
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August 3, 1998, but the CPA form was used by error. By this petition, Applicant is requesting that this second divisional application should be accepted as an application under 37CFR 1.53(b) and that a new serial number be assigned. It is noted that the specification, drawings and signed declaration which were deposited with the CPA of August 3, 1998 will constitute the original disclosure of the resulting application under 37 CFR 1.53(b).

Enclosed is a check for \$130 as payment of the petition fee. A payment of \$130 was made with the petition dated December 16, 1998 for the same matter. If the first payment can be applied to the present petition and the enclosed payment is not necessary, then Applicant requests return of the enclosed payment.



Respectfully submitted,

Nathan N. Kallman

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encl.



Serial No. 08/762,977
Attorney Docket No. A26996

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on *March 5*, 1999.

Nathan N. Kallman

Nathan N. Kallman

Dated:

Registration No. 19,405